

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37077 of 2003

K.Santhi

... Petitioner

Vs.

1.The Commissioner,
Madurantakam Municipality,
Madurantakam.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.Pachaiammal

4.Chellappa

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the 1st respondent to remove the encroachment in Santhai Street, also known as Mandapam Street, in front of the petitioner's house put up by Subbarayan alias Pillaiyar, whose legal representatives are Pachaiammal and Chellappa, immediately.

For Petitioner : Mr.M.S.Subramanian

For 1st Respondent : Mr.R.Chandrasekaran

For 2nd Respondent : Mr.Akhil Akbar Ali,
Government Advocate

For Respondents 3 & 4 : Mr.N.Nagu Shah

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O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the 1st respondent to immediately remove the encroachment in front of his house in Santhai Street, also known as Mandapam Street, put up by one Subbarayan alias Pillaiyar, whose legal representatives are Pachaiammal and Chellappa, the 3rd and 4th respondents herein.

2. According to the petitioner, he purchased Plot No.5 measuring an extent of 1950 sq. ft. in Nanja Survey No.965 out of 57 cents from K.V.Kuppusamy, S/o.Varadarajan vide registered Sale Deed dated 10.02.1992. The Plot is situated in an approved lay out sanctioned by the Director of Town and Country Planning vide Sanction No.44/90. She further submitted that she had applied for building permit vide B.A.No.32/2000 and 33/2000 on 07.09.2000 and has put up construction and completed the same. She also obtained necessary service connection from the Tamil Nadu Electricity Board for the said property and the said property has been assessed to House Tax.

3. The case of the petitioner is that one Elumalai and one Venkatasamy put up thatched huts in front of her plot and hence, her vendor viz. Kuppusamy filed a suit in O.S.No.391/1989 on the file of the District Munsif Court, Madurantakam for mandatory injunction to remove the superstructure and the suit was decreed on 27.07.1975. Hence, aggrieved by the same, the defendants went on appeal in A.S.No.22/1995 on the file of the Sub Court, Chengalpet, which was dismissed on 23.01.1996. Challenging the same, the defendants preferred an appeal before this Court in S.A.No.1027 of 1996 and the same is pending.

4. It is the further case of the petitioner that one Subbarayan alias Pillaiyar had encroached upon the road portion in S.No.964 and had put up a superstructure in front of her house, which is south of transformer and hence, she was constrained to file O.S.No.420 of 1997 for mandatory injunction for removing the superstructure. In the said suit, the said Subbarayan contended that the lands on which he had put up superstructure is a Municipal Poramboke and therefore, only the Municipality could evict him under due process of law. Since the said Subbarayan died, the petitioner has impleaded the former's wife, Pachiammal and his son, Chellappa, as his legal representatives.

5. It is the contention of the petitioner that S.No.964 in Santhai Street alias Mandapam Street is a public street under the control of Madurantakam Municipality and it is the bounden duty of the Municipality to provide access from the road to her house. The petitioner further submitted that the Building Inspector made spot inspection on 10.05.2000 and he gave a Report that the encroachments should be removed. Despite repeated requests, since the Municipality did not care to take further action in this matter and remove encroachments on the public street, having no other alternative, the petitioner is before this Court.

6. Learned counsel for the petitioner submitted that one Subbarayan, had encroached the road portion in S.No.964 and had

put up a superstructure in front of the petitioner's house and since the said Subbarayan is no more, his legal heirs are arrayed as respondents 3 and 4 in this Writ Petition. He further submitted that he also sent an intimation to his client, i.e. the petitioner as regards the case on hand, but the same has been returned. According to the learned counsel, he could not know the whereabouts of the petitioner.

7. Learned counsel appearing for the 1st respondent/Municipality submitted that the 1st respondent/Commissioner of Madurantakam Municipality appeared before this Court on 10.08.2017 as per the order passed by this Court. According to the learned counsel, respondents 3 and 4 are encroachers and that they got an interim order in their favour in O.S.No.420 of 1997 and that is the reason no encroachments could be removed.

8. Learned counsel appearing for respondents 3 and 4 submitted that the suit in O.S.No.420 of 1997 was filed by the petitioner and there was an interim order against the respondents 3 and 4.

9. Admittedly, Santhai Street is a public street under the control of Madurantakam Municipality and it is the duty of the Municipality to remove the encroachments. As per Section 61 of the Tamil Nadu Municipal Act, all public streets with pavements, stones and other materials thereof and all work materials and other things provided for such streets, on sewers, drains, drainage work, tunnels and culverts alongside any street whether public or private shall rest in Municipal Council, and as such, it is the duty of the Municipal Council to maintain the same including the duty not to allow encroachments and in case, encroachments are made, it is their duty to remove the same.

10. Section 180 of the Tamil Nadu Municipal Act prohibits anyone from building any wall or erect any fence or either obstructions or projections or construct any encroachment in any street and under Section 182 of the Act, the Executive Authority has the power to remove the encroachments after issuing notice. In the case on hand, such notice has already been issued to the 3rd respondent herein.

11. For better appreciation of the case, it is useful to refer to a Full Bench decision of the Madurai Bench of this Court in the case of Ramaraju, T. vs. State of Tamil Nadu, reported in 2005 (2) CTC 741 (FB), wherein it is observed as follows:

"38.

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any

is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183 (6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

.. . . .

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporation or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporation or Panchayats.

.. . . .

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

.. . . ."

12. Though it is submitted by the learned counsel appearing for the respondents that respondents 3 and 4 have got an interim order passed in O.S.No.420 of 1997 in their favour, there is no document on record to substantiate the same. Admittedly, respondents 3 and 4 are encroachers of public land and I find much force in the contentions of the learned counsel for the

petitioner. In view of the ratio laid down in the decision cited supra and taking note of the fact that the encroachment lies on the public street, the 1st respondent/Municipality is directed to survey the land in question and thereafter demolish the encroached portion within a period of 45 days from the date of receipt of a copy of this order.

13. If no action is taken by the official respondents or their authorities to take possession of the land under encroachment within the above stipulated time, disciplinary action including dismissal from service is to be taken against the staff, who is responsible for taking possession and who is not willing to discharge his duties to safeguard the interest of the Government land in question. After removal of the encroachment in the property in question by the official respondents within a period of 45 days from the date of receipt of a copy of this order, as directed supra, the compliance report shall be submitted to the Registrar General of this Court forthwith, who shall place the same before me within one week from the date of receipt of the said compliance report.

14. The District Collector, Kancheepuram District/2nd respondent herein and the Superintendent of Police, Kancheepuram District shall extend their support to remove the above said encroachment.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.P.M.P.No.44267 of 2004 is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Commissioner,
Madurantakam Municipality,
Madurantakam.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Superintendent of Police,
Kancheepuram District.

Copy To

1.The Registrar General,
High Court, Madras.

2.The Section Officer,
Legal Cell,
High Court, Madras.

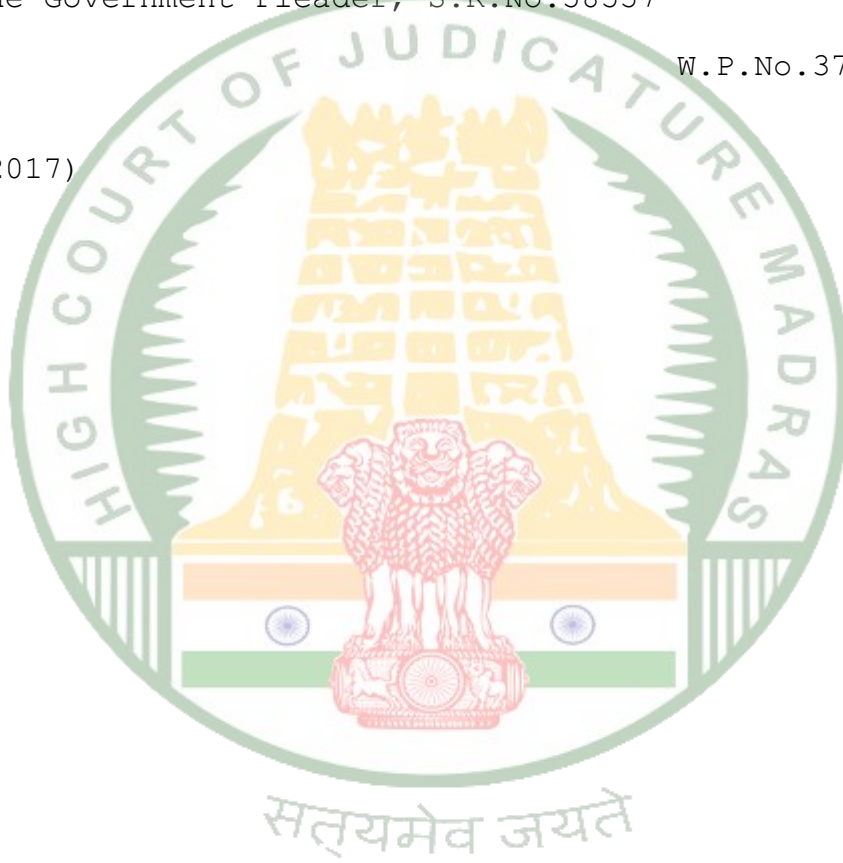
+lcc to Mr.N.Nagu Shah, Advocate, S.R.No.58268

+lcc to Mr.M.S.Subramanian, Advocate, S.R.No.58003

+lcc to the Government Pleader, S.R.No.58557

W.P.No.37077 of 2003

CS V
CA(01/09/2017)



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